STATE OF MICHIGAN

COURT OF APPEALS

STEVEN V. NORGIEL,

Plaintiff-Appellant,

v

TUFF MACHINE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 26, 2002

No. 227446
Wayne Circuit Court
LC No. 99-906365-CK

Before: Jansen, P.J., and Holbrook, Jr., and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant in this case alleging breach of contract. We affirm.

On July 31, 1995, plaintiff and defendant entered into a settlement agreement after plaintiff had filed suit against defendant in 1994 for breach of a sales representative agreement. Under the terms of the settlement agreement, defendant agreed to purchase boring, grinding, and detailing services in the amount of $600,000 from Total Tool and Boring Company (a company in which plaintiff was a shareholder) for a six-year period. Between 1995 and 1998, defendant purchased about $151,000 in services from Total Tool, which then became insolvent in 1998 and ceased doing business. The settlement agreement provided for the insolvency of Total Tool as follows:

> 6. In the event Total Tool and Boring Company becomes insolvent, dissolves or otherwise becomes unable to perform work on behalf of Tuff Machine Company, Tuff Machine Company will be held harmless and have no further obligation to Total Tool and Boring Company whatsoever under this agreement; then, and in that event, Stephen V. Norgiel shall be entitled to assign the rights given to Total Tool and Boring Company in this agreement to any other company or corporation in which Stephen V. Norgiel is an owner or stockholder, in whole or in part, as long as the company or corporation in which the rights are assigned is able to perform boring, grinding or detailing services similar to Total Tool and Boring Company.

At his deposition, plaintiff testified that he does not own any stock in a corporation, nor does he have any ownership interest in any corporation. Plaintiff claims that he has a "handshake agreement" with Paul Martin, the owner of Dearborn Die Components, to a five

percent ownership interest in a boring mill located at Dearborn Die. Based on this five percent interest in the boring mill, plaintiff requested work from defendant for Dearborn Die pursuant to the terms of the settlement agreement. Defendant did not send any work to plaintiff, and plaintiff has alleged breach of contract under the terms of the settlement agreement.

Defendant moved for summary disposition under MCR 2.116(C)(8) and (10), arguing that because plaintiff had not assigned the rights given to Total Tool to any other corporation and was not an owner or shareholder of any corporation, that defendant owed no further obligation to plaintiff under the terms of the settlement agreement. The trial court ruled that the language of the settlement agreement was clear and that there was no evidence that plaintiff was an owner or stockholder in any company or corporation to which he could assign the rights given to Total Tool under the settlement agreement. Consequently, the trial court granted summary disposition in favor of defendant.

Upon de novo review, *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999), we affirm the trial court for the reasons stated by the trial court on the record. As required by the clear terms of paragraph six of the settlement agreement, in order for plaintiff to continue receiving jobs from defendant, plaintiff had to assign the rights given to Total Tool to any other company or corporation in which plaintiff was an owner or stockholder, in whole or in part, as long as the company performed work comparable to Total Tool. Here, there is no evidence that plaintiff was an owner or stockholder in Dearborn Die, or any other similar company. In fact, plaintiff specifically testified at his deposition that he is not an owner or stockholder in any company or corporation.

We disagree with plaintiff's contention that his five percent ownership interest in a boring machine at Dearborn Die is sufficient for him to be considered an owner or stockholder in a company or corporation as required by the settlement agreement. Ownership in a machine located in a company simply does not constitute ownership or being a stockholder as required under the terms of the settlement agreement. Further, to the extent that plaintiff claims that defendant exercised its option to terminate the settlement agreement within five years, as provided for in paragraph five of the settlement agreement, such that plaintiff is entitled to fifteen percent of the difference between $151,000 and $600,000, we again disagree because there is no evidence that defendant terminated the settlement agreement. Rather, defendant no longer gave jobs to plaintiff once Total Tool ceased doing business and under the terms of the settlement agreement, defendant was no longer obliged to do business with plaintiff unless plaintiff assigned the rights given to Total Tool to another company in which plaintiff was an owner or stockholder.

Because the settlement agreement is clear and unambiguous and no reasonable person could differ with respect to application of the settlement agreement to the undisputed facts, the trial court properly granted summary disposition to defendant under MCR 2.116(C)(10). *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Richard Allen Griffin